

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
FRANK GOMEZ, JR. and ) CASE NO. 05-60977 JPK  
CLAUDIA YVETTE GOMEZ, ) Chapter 13  
 )  
Debtors. )

ORDER DENYING MOTION FOR ADEQUATE PROTECTION

On June 29, 2006, American General Financial Services, Inc., by counsel, filed a Motion for Adequate Protection. This motion asserts that the creditor has a security interest in a 1994 Ford Mustang; that the creditor is "not aware of any insurance listing them as loss payee with deductible of less than \$500.00"; and that the creditor is not receiving payments on its secured claim. The prayer for relief in the motion is that American General Financial Services be accorded adequate protection pursuant to 11 U.S.C. § 363(e) and § 361 "in the form of cash payments during the pendency of this matter", and "for all other further relief the Court deems just and equitable".

The record establishes that the debtor filed a Chapter 13 plan on March 7, 2005, which was confirmed by an order entered on June 30, 2005. The provisions of the plan include a secured claim of American General Finance in the amount of \$4,500.00, to be paid at a discount rate of 6% per annum "Prorata". The payments under the plan are to be made to the creditor through the Chapter 13 Trustee.

11 U.S.C. § 1327(a) states that the "provisions of a confirmed plan bind the debtor and each creditor . . ." As stated in *In re Patterson*, 107 B.R. 576, 578-579 (Bankr. S.D.Ohio 1989):

Section 1327(a) of the Bankruptcy Code provides as follows:  
The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan and whether or not such creditor has objected to, has accepted, or has rejected the plan.  
The applicability of the provisions of § 361 and § 362 are not expressly limited; nevertheless, to allow a secured creditor to

come in with demands after confirmation of the plan would eviscerate the effect of any order of confirmation, and prejudice the debtor's ability to exercise his rights to employ Chapter 13 as a means of financial rehabilitation. *In re Bonanno, supra*. An Order confirming the Chapter 13 plan is res judicata as to all justiciable issues which were or could have been decided at the Confirmation hearing. Therefore, if the plan makes provision for payment of the creditor's claim, issues of lack of adequate protection are res judicata as of confirmation of the plan. *Anaheim Savings and Loan Association v. Evans (In re Evans)*, 30 B.R. 530 (9<sup>th</sup> B.A.P.1983); *In re Moore*, 13 B.R. 914 (Bankr.D.Ore.1981); *Matter of Willey*, 24 B.R. 369 (Bankr.E.D.Mich.1982); *Rhode Island Central Credit Union v. Zimble (In re Zimble)*, 47 B.R. 639 (Bankr.D.Rhode Island 1985);

As stated in *In re Brock*, 6 B.R. 105, 107 (Bankr. N.D.Ill. 1980): "The applicability of Section 361 to Chapter 13 proceedings, however, is limited to the time between filing the Voluntary Petition and Confirmation of the Plan by Section 1327 . . ."

The payment terms of the debtors' confirmed plan thus bind the creditor as to all issues regarding adequate protection, and the creditor's motion thus seeks to present a claim to the Court upon which relief cannot be granted as a matter of law. If the assertions of that motion are correct, the creditor is not without remedy: it may be possible for the creditor to establish grounds for dismissal of the case under 11 U.S.C. § 1307(c), or for obtaining relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

IT IS ORDERED that the Motion for Adequate Protection filed by American General Financial Services on June 29, 2006 is denied, without prejudice to remedies available to that creditor under otherwise applicable law.

Dated at Hammond, Indiana on July 17, 2006.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee  
Attorney for Creditor